Cabinet 692

VINDICATION

OF

HON. JOSEPH HOLT,

JUDGE ADVOCATE GENERAL

OF

The United States Army.

WASHINGTON:
CHRONICLE PUBLISHING COMPANY, 511 NINTH STREET.
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WAR DEPARTMENT,
BUREAU OF MILITARY JUSTICE,
August 25, 1873.

To the Editor of the Chronicle:

I beg the privilege of your columns for the purpose of laying before the loyal public the subjoined letter addressed by myself to the Hon. Secretary of War, with its accompanying papers, and the Secretary's reply thereto. The correspondence relates to a slander, which had its origin and fulfilled its base mission years ago, having claimed, in its circulation, the authority of the then acting President of the United States. I am well assured that it lingers yet in certain unfriendly circles, where it still finds a blind or a malignant support. Since the date of my communication to the Secretary of War I have received a letter from General Mussey, full extracts from which are appended. It will be seen that he entirely substantiates the position maintained throughout my defense, that President Johnson had knowledge of, considered, and commented on the recommendation of Mrs. Surratt to clemency by members of the court before her execution. Inviting a candid and careful scrutiny of the evidence now produced in my exoneration, I leave this aspersion for such judgment as those who love the truth and do justice may think proper to pronounce upon it.

J. HOLT.

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WAR DEPARTMENT,
BUREAU OF MILITARY JUSTICE,
August 14, 1873.

Hon. W. W. Belknap, Secretary of War:

SIR: Soon after the execution of Mary E. Surratt, as one of the assassins of President Lincoln, I was, by certain public journals and through the utterances of disloyal and malignant persons, accused of having, when presenting the record of her trial to President Johnson, withheld from him a petition, signed by five members of the court, recommending, in consideration of her age and sex, a commutation of her death-sentence to imprisonment for life in the penitentiary. It was further added that the President had been thus led to approve the proceedings and sentence without any knowledge whatever of the existence of this petition.

A more groundless calumny was never conceived or proclaimed against any public officer. No word had been spoken or act done or left undone by me which could have suggested such a charge, or excited the faintest suspicion that it was well founded. The charge itself was industriously circulated by those who, mourning the then recent overthrow of the rebellion, logically enough denounced the condemnation of the assassins, who had done its bloody work, and eagerly defamed all, except only President Johnson himself, who had been in any way concerned in the prosecution and punishment of these criminals. This denunciation was naturally the more intemperate in the case of Mrs. Surratt because of her conspicuous association with the crime, "she having kept," to quote the language of President Johnson, "the nest that hatched the egg," or, in other words, her house having been the rendezvous of the conspirators, where, under her personal supervision and prompting, their murderous schemes were matured. In my letter to Judge Bingham, a copy of which is hereto appended, will be found stated the reason why my defense against this cruel imputation has been so long delayed. The proofs of my innocence are now in my possession, and I respectfully offer them for your consideration, believing it is to yourself, as the head of the military administration, that my response to this attack at once upon my official integrity and upon the honor of the service should be addressed.

Before proceeding, however, to enumerate these proofs it is proper to observe: First. This petition had been read by the nine members of the court, five of whom had signed it; its existence and character were known to the two special judge advocates, one of whom—Judge Bingham—had prepared it at the instance of General Ekin, a member of the court, and it had also been made known to Secretary Stanton, immediately after the

close of the trial, by Judge Bingham, as well as by myself. So that there were twelve officers of the Government, of rank and reputation—one of them a member of the Cabinet—who, before any action had been taken by the President, knew that this petition had been addressed to him, and was attached to the record. Well aware of this, as I was—had I been capable of such a crime—for me to have attempted the suppression or concealment of the paper from the President would have argued a stupidity on my part verging upon idiotcy—assured, as I must have been, that immediate exposure, punishment, and dishonor would follow the perfidious act. Second. Had I been criminal, as charged, it must have been known to President Johnson directly after the execution, since the petition in favor of Mrs. Surratt was then publicly spoken of in Washington, and was soon thereafter referred to in the newspapers of the country. Having this information, he would have known that I had been guilty of the greatest offense possible, in my official position, against the law, and against my duty, and an imperative obligation would have rested upon him to have me tried and punished by the sentence of a military court. And this obligation he would have the more unhesitatingly discharged, since the offense, if it existed, would have involved the enormity of treacherously misleading him in the performance of the most solemn of his duties, affecting the life of a human being. I certainly had no claims upon his forbearance—none whatever—and those who can assert that under such circumstances he would have spared me must regard him as having been capable of utter unfaithfulness to the responsibilities of his great office. He, however, ordered no court for my trial, had no charges preferred, and made no open accusation, but continued with me the same official relations as before, to the close of his administration. For this course on his part no possible explanation can be offered, except the simple fact that he knew, and knew well, that in the matter referred to I had performed my whole duty, and that I had not only presented the petition to him, but that he had read it and commented on it in my presence.

The testimonies submitted are as follows:

First. A copy of my letter of explanation and inquiry to Hon. John A. Bingham, and his answer under date of 17th February, 1873, followed by a copy of extracts from my reply thereto. *Judge Bingham states that having drawn the petition on behalf of Mrs. Surratt, and having, after her execution, heard the report that it had been withheld by me from the President, he called on the Secretaries of State and of War—Messrs. Seward and Stanton—and was assured by them both that the petition had been before the President, and "had been duly considered by him and his advisers before the death-sentence upon Mrs. Surratt had been approved, and that the President and the Cabinet upon such consideration were a unit in denying the prayer of the petition."* In view of the national reputation of these three distinguished statesmen for intelligence and integrity, speaking as they have done of matters within their personal knowledge, it is not believed that their statements will be questioned in any quarter; and here I might safely rest my defense. Their representations being accepted as true, the accusation against myself is necessarily false.

Second. A letter from the Hon. James Speed, then Attorney General, and as such a member of President Johnson's Cabinet at the time. While he does not feel at liberty to disclose what was said at Cabinet meetings, he asserts that *before the execution of the assassins he saw the record of their trial in the President's office, and that the petition in favor of Mrs. Surratt, signed by members of the court, was then attached to it.* This again affords me a complete vindication, since the petition, with the record, being in the President's office, and thus in his possession, I could not have withheld it from him. If, being there, he did not examine it—which I know he did—the responsibility for such remissness certainly could not rest on me.

Third. A letter from the Hon. James Harlan under date of May 27, 1873. Mr. Harlan was Secretary of the Interior, and, as such, a member of President Johnson's Cabinet. His letter powerfully corroborates the statements of Messrs. Seward and Stanton. He says he "remembers distinctly the discussion of the question of the commutation of the sentence of death pronounced on Mrs. Surratt by the court, to imprisonment for life, had by members of the Cabinet in the presence of President Johnson;" that he believes the meeting to have been an informal one, there having "been present Messrs. Seward and Stanton and himself, and possibly Attorney General Speed and others." He adds that when he entered the room one of the gentlemen named "was addressing the President in an earnest

conversation on the question whether the sentence ought to be modified on account of the sex of the condemned"—the very question presented by the petition—and he gives the striking language in which the member couched his protest against the exercise of clemency on the ground mentioned. He also alleges that no sentiment favorable to clemency was expressed, and that, fearing himself, from the brief period to elapse before the death-sentence was to be executed, that the examination of the record, &c., might not be as thorough as it should be, he "inquired at the time whether the Attorney General had examined the record of the trial, including the testimony, for the purpose of discovering any possible mistakes, oversights, or errors of law governing the case," and was answered that "the whole case had been fully examined by the Attorney General and the Secretary of War, and that the only question raised was, whether the punishment should be reduced on account of the sex of the party condemned." This meeting of the Cabinet is undoubtedly the one referred to by Messrs. Seward and Stanton, the question discussed and the result being the same. The significance and value of the reply to Mr. Harlan, as to the thoroughness of the examination which had been made, will be realized when I affirm as a fact that in no part of the record was there the slightest allusion to the question of clemency to Mrs. Surratt, *except in the petition signed by the five members of the court.* In the declaration, then, to him that the case had been examined by Messrs. Stanton and Speed, and that the only question presented was that of clemency to Mrs. Surratt on account of her sex, there was necessarily involved an affirmation *that the petition itself had also been examined;* but from whom could they have received it except from President Johnson, in whose office it had been seen by Attorney General Speed? This declaration was made in Cabinet, and in presence of the President. Is it possible to suppose that he did not understand its full import? Can it be credited for a moment that his two faithful counselors, (Messrs. Stanton and Speed,) charged by him with the duty of examining and reporting upon the case, would suppress in their report a petition like this; one, too, which gave rise to the only question they deemed it necessary for him to consider?

The discussion in the Cabinet seems to have assumed that those present were acquainted with the character of the petition, and hence its non-production on the occasion was no more evidence that it had not been in the hands of the President and of Messrs. Seward, Stanton, and Speed than was the non-production of the record of the trial evidence that *it* had not been seen by the President and the members of his Cabinet named. It is to be borne in mind that it in no manner concerns my defense to show what was said or done in the Cabinet touching this petition, or, indeed, to show that it was brought to the notice of the Cabinet at all. My duty ended with delivering it, with the record, to the President, and in going further and proving it to have been also before the Cabinet in council, I have had no object except thus to prove more certainly that it was before the President himself.

Fourth. A letter from the Rev. Dr. Butler, detailing a conversation had with President Johnson the evening of the day on which the assassins were executed. The President, on that occasion, appears to have spoken without reserve of the earnest appeal which had been made to him on behalf of Mrs. Surratt, because of her sex, and also to have made known, in terms as forcible as figurative, his conviction of this woman's guilt, and of her prominence and efficiency in weaving the fatal web of the conspiracy.

Fifth. The letters of Messrs. James M. Wright and Frank T. Howe, the former being at the time and still chief clerk of the Bureau of Military Justice. It may be concluded with absolute certainty from these letters, that the petition or recommendation in favor of Mrs. Surratt was attached to the record of the trial of the assassins, when it was received at the Bureau from the court; that it was so attached when I took the record from the Bureau for the purpose of presenting it to the President for his action, and that when the record was returned to the Bureau from the President's, through the Adjutant General's office, the petition continued attached to it as before.

Mr. Wright further says: "The page on which the signature of the President, together with the greater part of his order of approval, was written, was confronted by the next page, on which the recommendation to clemency appeared; the leaves having been fastened together, as is usual, at the ends, this brought these two pages directly face to face to each other."—So that in affixing his signature in approval of the proceedings and

sentence, the President's eye necessarily fell on the petition or recommendation in favor of Mrs. Surratt, and this relation of these leaves to each other, Mr. Wright declares, "has never been disturbed."

Very respectfully, your obedient servant,

J. HOLT, Judge Advocate General.

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WASHINGTON, February 11, 1873.

Hon. John A. Bingham:

DEAR SIR: As you were of counsel for the Government, and made the argument for it, on the trial of the assassins of the late President Lincoln, you, of course, are aware that a petition, asking the President, in consideration of her age and sex, to commute Mrs. Surratt's death-sentence into confinement in the penitentiary for life, was signed by five members of the court, and was attached to the record of the trial. In the discharge of my duty, when presenting that record to President Johnson, I drew his attention to that recommendation, and he read it in my presence, and before approving the proceedings and sentence. He and I were together alone when this duty on his part and on mine was performed. Afterwards, as you will probably remember, when his friends, under well-understood inspirations, sought to shield him from the responsibility of his action in ordering the execution of Mrs. Surratt, it was, through certain newspaper notices, and in other ways, asserted to the public that when I delivered the record of the trial of the assassins to the President, I withheld from him the recommendation on behalf of Mrs. Surratt, and that he approved the death-sentence without having seen the recommendation or known of its existence. This allegation was an atrocious calumny upon myself, and was wholly and basely false. The President and myself having, as already stated, been alone at the time, I have not been able to obtain any positive proof on the point, though I have been able to collect circumstantial evidence, enough to satisfy any unbiased mind, that the recommendation was seen and considered by the President when he examined and approved the proceedings and sentence of the Court. Still, in a matter so deeply affecting my reputation and official honor, I am naturally desirous of having the testimony in my possession strengthened as far as practicable, and hence it is that I trouble you with this note.

While I know that the question of extending to Mrs. Surratt the clemency sought by the petition was considered by the President at the time mentioned, I have, in view of its gravity, been always satisfied that it must have been considered by the Cabinet also, but from the confidential character of Cabinet deliberations I have thus far been denied access to this source of information. I write, therefore, to request that you will be so good as to state whether or not you had a conversation with the Hon. W. H. Seward, Secretary of State under President Johnson, in reference to the petition for clemency for Mrs. Surratt, and, if so, please state, as nearly as you may be able to do, all that he said on the subject. I ask this in the interest of truth, and as a means of defending myself should this shameless aspersion upon me ever be revived.

Very respectfully, your obedient servant,

J. HOLT.

—

WASHINGTON, February 17, 1873.

MY DEAR GENERAL: In reply to yours of the 11th instant, I have the honor to say that after the Military Commission had tried and sentenced the parties brought before them and charged with the assassination of our late President, Mr. Lincoln, before the final adjournment of the Commission I prepared the form of petition to the President, Mr. Johnson, in behalf of Mrs. Mary E. Surratt.

The petition so prepared was in substance, and almost litterally, as follows:

To the President:

"The undersigned, members of the Military Commission appointed to try the persons charged with the murder of Abraham Lincoln, &c., respectfully represent that the Commission have been constrained to find Mary E. Surratt guilty, upon the testimony, of the assassination of Abraham Lincoln, late President of the United States, and to pronounce upon her, as required by law, the sentence of death; but, in consideration of her age and sex, the undersigned pray your Excellency, if consistent with your sense of duty, to commute her sentence to imprisonment in the penitentiary."

This petition, drawn by me, was copied by a member of the Commission, and signed by a majority of the Commission, and the copy so signed attached to the official record. The original of this petition, in my handwriting, remained in possession of General James A. Ekin, a member of the Commission, and upon it is indorsed the names of the petitioners.

Before the President had acted upon the case I deemed it my duty to call the attention of Secretary Stanton to the petition for the commutation of sentence upon Mrs. Surratt, and did call his attention to it before the final action of the President.

After the execution the statement to which you refer was made, that President Johnson had not seen the petition for the commutation of the death-sentence upon Mrs. Surratt. I afterwards called at your office, and, without notice to you of my purpose, asked for the record in the case of the assassins; it was opened and shown me, and there was then attached to it the petition, copied and signed as hereinbefore stated. *Soon thereafter I called upon Secretaries Stanton and Seward, and asked if this petition had been presented to to the President before the death-sentence was by him approved, and was answered by each of those gentlemen that the petition was presented to the President, and was duly considered by him and his advisers before the death-sentence upon Mrs. Surratt was approved, and that the President and the Cabinet, upon such consideration, were a unit in denying the prayer of the petition; Mr. Stanton and Mr. Seward stating that they were present.*

Having been the special Judge Advocate for the United States, and as such having made the argument on the trial of the assassins, I thought it due to myself, and to others as well, to know if the petition drawn by me in behalf of Mrs. Surratt had been considered by the President. Having ascertained the fact as stated, *I then desired to make the same public, and so expressed myself to Mr. Stanton, who advised me not to do so, but to rely upon the final judgment of the people.**

With great respect, very truly yours,

JNO. A. BINGHAM.

GENERAL J. HOLT, Judge Advocate, U. S. A.

—

WASHINGTON, February 18, 1873.

Hon. John A. Bingham:

DEAR SIR: I am in receipt of your reply to my letter of the 11th instant, and for your full and detailed answer to my inquiry I beg to return you my sincere thanks. It would have been fortunate for me indeed could I have had this testimony in my possession years ago. Mr. Stanton's advice to you was, under all the circumstances of the case, most extraordinary.

* * * * * *

The asking you "to rely upon the final judgment of the people," and at the same time withholding from them the proof on which that judgment—to be just—must be formed, was a sad, sad mockery.

* * * * * *

Very respectfully, your obedient servant,

J. HOLT.

—

LOUISVILLE, March 30, 1873.

MY DEAR GENERAL: Your note of the 28th is just to hand. After the finding of the Military Commission that tried the assassins of Mr. Lincoln, and before their execution, I saw the record of the case in the President's office, and attached to it was a paper, signed by some of the members of the Commission, recommending that the sentence against Mrs. Surratt be commuted to imprisonment for life; and, according to my memory, the recommendation was made because of her sex.

I do not feel at liberty to speak of what was said at Cabinet meetings. In this I know I differ from other gentlemen, but feel constrained to follow my own sense of propriety.

Most truly, your friend,

JAMES SPEED.

GENERAL JOSEPH HOLT, Washington.

—

WASHINGTON, D. C., May 27, 1873.

DEAR GENERAL: Watching by the bedside of an invalid member of my family has prevented an earlier acknowledgment of the receipt of your favor of the 21st instant, inclosing a letter addressed to you by Hon. John A. Bingham, bearing date February 17, 1873, which you desire me to peruse.

Referring to Mr. Bingham's narrative, I find his statements may be condensed as follows, viz: That at the close of the trial of Mrs. Mary E. Surratt, for participation in the assassination of Mr. Lincoln, resulting in her

*This counsel was followed, yet with no willingness, I am sure, on the part of Judge Bingham that I should suffer wrong, but probably because he felt that Mr. Stanton had a right to control the disclosure which he had made to him. Mr. Stanton's own conduct afterward was in strict accord with the strange advice given by him, he having lived years thereafter without divulging to the country or to myself this most conclusive testimony, although he must have known how deeply it concerned my reputation, as it did the honor of the military administration of which he was the head, and how completely, if made public, it would establish the truth in my defense. His having made the communication to Judge Bingham—who had but little interest in it—shows clearly that his subsequent silence was not imposed by any scruples growing out of the connection of the information with Cabinet deliberations. The state of fact now mentioned will explain why it is that this vindication, which, under different circumstances, would have been made in 1865, has been so long postponed. J. H.

conviction and sentence to death, he; being the special Judge Advocate of said Court, drew up a petition, which was signed by its members to the number of five, praying the President, on account of her age and sex, to commute this sentence to imprisonment for life, which, being attached to the record of the trial, was presented to the President through the usual channels, the War Department; that he personally called the attention of the Secretary of War to this petition before the case was acted on by the President, and afterward, on personal inquiry, was told by Mr. Seward, Secretary of State, and Mr. Stanton, Secretary of War, that this petition was laid before the President, and considered by him and his Cabinet, who were a unit against the commutation of the sentence prayed for.

You request me to communicate to you my recollection on this subject, and particularly as to what members of the Cabinet were present at such supposed Cabinet consultation; what was done and said, and whether there was any dissenting voice to the adverse conclusion arrived at.

You inform me that you seek this information "simply in the interests of truth and justice, and to enable you to refute a calumny maliciously circulated soon thereafter, and still repeated in hostile circles, to the effect that you had withheld from the President this petition for clemency on behalf of Mrs. Surratt, and that he had approved the proceedings and sentence of the court without being aware even of its existence."

Appreciating the pain which a gentleman of refined sensibilities and a high sense of honor must suffer under the circumstances you describe, (although not believing that your reputation has been or can be seriously injured thereby,) I do not feel at liberty to decline your request, being sustained in my conviction of its propriety by the previous action of Messrs. Seward and Stanton. I therefore state frankly the little I am able to call to mind on the subject, viz: After the sentence, and before the execution of Mrs. Surratt, I remember distinctly the discussion of the question of the commutation of the sentence of death pronounced on her by the Court to imprisonment for life had by members of the Cabinet, in the presence of President Johnson. I can not state positively whether this occurred at a regular or called meeting, or whether it was at an accidental meeting of several members, each calling on the President in relation to the business of his own Department. The impression on my mind is that the only discussion of the subject by members of the Cabinet which I ever heard occurred in the last-named mode, there being not more than three or four members present—Mr. Seward, Mr. Stanton, and myself, and possibly Attorney General Speed, and others—but I distinctly remember only the first two. When I entered the room one of these was addressing the President in an earnest conversation on the question whether the sentence ought to be modified on account of the sex of the condemned. I can recite the precise thought, if not the very words, used by this eminent statesman, as they were impressed on my mind with great force at the time, and I have often thought of them since, viz: "Surely not, Mr. President, for if the death-penalty should be commuted in so grave a case as the assassination of the head of a great nation on account of the sex of the criminal, it would amount to an invitation to assassins hereafter to employ women as their instruments, under the belief that if arrested and condemned they would be punished less severely than men. An act of executive clemency on such a plea would be disapproved by the government of every civilized nation on earth."

No part of the record of the trial, the decision of the court, or the recommendation of clemency was at that time, or ever at any time, read in my presence. I am positive on this point, for I remember with undoubting distinctness inquiring at the time whether the Attorney General had examined the record of the trial, including the testimony, for the purpose of discovering any possible mistakes, oversights, or errors of law governing the case, observing that the time intervening between the date of the sentence and that fixod for the execution was very short, and if such errors should be discovered afterwards, it would cause the severest censure on account of what would in such case be regarded as unpardonable haste, I was told that the whole case had been carefully examined by the Attorney General and the Secretary of War, and that the only question raised was whether the punishment shall be reduced on account of the sex of the party condemned. I do not remember that any differences of opinion were expressed on that point. The question, however, was never submitted when I was present to the Cabinet for a formal vote.

I am unable to recall the memory of any other facts which I suppose would tend to throw light on the subject of your inquiry.

I am, dear sir, with great respect,

Your obedient servant,

JAMES HARLAN.

Hon. J. HOLT,
Judge Advocate General, U. S. A.,
Washington, D. C.

—

ST. PAUL'S PARSONAGE,
December 5, 1868.

Hon. J. Holt:

MY DEAR SIR: Absence from the city has delayed my reply to yours of the 1st instant, relative to my interview with President Johnson when the execution of the conspirators and assassins was our topic of conversation. The interview occurred during a social call upon the family of the President in the evening, a few hours after the execution. I had been summoned by the Government, I then being a hospital chaplain, to attend upon Atzerodt, and was present at the execution.

Concerning Mrs. Surrtat, the remarks of the President, by reason of their point and force, impressed themselves especially upon my memory. He said, in substance, that very strong appeals had been made for the exercise of the Executive clemency; that he had been importuned; that "telegrams and threats" had been used; but he could not be moved, for, in his own significant language, Mrs. Surratt "*kept the nest that hatched the egg.*" The President further stated that no plea had been urged in her behalf, save the fact that she was a *woman*, and his interposition upon that ground would license female crime.*

I do not remember that Mr. Johnson used the names of any individuals who had sought his interposition in behalf of Mrs. Surratt.

I feel that this statement is due to yourself and the honorable members of the Military Commission ordered to investigate this unparalleled crime in the history of our nation; and several of these gentlemen I have the honor to know personally and to esteem very highly as men of Christian integrity.

I was induced to allude to this interview with President Johnson in a friendly letter to my esteemed friend and parishioner; General Ekin, whose name, and to the honor of his heart, has been associated with a petition said to have been presented to the President in behalf of Mrs. Surratt. I felt it due to a Christian soldier and personal friend to make this statement, showing clearly that at the time of the execution the President's judgment wholly accorded with the judgment of the Military Commission, and that no appeals could then change his purpose to make "treason odious," and for the same reason I feel that this statement is due to yourself

I am, very truly, your friend,

J. GEO. BUTLER,
Pastor St. Paul's Church.

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WAR DEPARTMENT,
BUREAU OF MILITARY JUSTICE,
WASHINGTON, D. C., January 8, 1868.

Brevet Major General Joseph Holt, Judge Advocate General:

GENERAL: In reply to the inquiry contained in your note of yesterday, in regard to the condition of the record of the trial of the assassins of the President, when it came into my hands and since, I have to submit the following statement, which is made according to the best of my knowledge and recollection:

When the record first came to this Bureau

*This language certainly announces with sufficient distinctness President Johnson's recognition of the necessity of executing Mrs. Surratt, but it does not express the *determination* which had animated him as decidedly as did his conduct on the day of the execution. On the morning of that day Judge Wylie issued a writ of *habeas corpus*, directed to Major General Hancock, who had the custody of the assassins condemned to death, the object of which was, and the effect of which would have been, had it been obeyed, to delay the execution of Mrs. Surratt at least until the questions of law raised had been decided by the civil courts of the District; yet this writ was, by the express order of the President, rendered inoperative. He made upon it an indorsement, addressed to Major General Hancock, in the following words:

"*To Major General W. S. Hancock, commanding, &c.:*

"EXECUTIVE OFFICE,
"July 7, 1865—10 o'clock A. M.

"I, Andrew Johnson, President of the United States, do hereby declare that the writ of *habeas corpus* has been heretofore suspended in such cases as this, and I do hereby especially suspend this writ, and direct that you proceed to execute the order heretofore given upon the judgment of the Military Commission, and you will give this order in return to this writ.

"ANDREW JOHNSON, President."

And so, under this Presidential mandate, the execution proceeded; and yet those who clamored against the officers of the Government whose duties, regardless of their own personal wishes, connected them with the trial of the assassins, treated President Johnson with the tenderness due to a pet lamb, never for a moment intimating that Mrs. Surratt's death was in any way chargeable, or even traceable, to him. Still, but for his direct intervention and defiant action on the writ, whatever might have been the final result, it is perfectly apparent that her life would not *then* have been taken.

J. H.

from the court or from the War Department, it was received by the messenger, as all other records are, and I think I directed him to your room, or to that of the officer specially charged with reviewing records, and in the presence of Mr. Howe, and perhaps other clerks, (but my memory is not positive about others,) I examined the findings and sentence, the sheets containing which were not fastened together as the volumes of the record, but were attached to each other by a small yellow ribbon. I am quite positive that the recommendation of five members of the court for clemency in the case of Mrs. Surratt was written on one of the sheets thus attached together, and that this sheet, which was legal cap, corresponded in all respects with the other paper of the record. Soon after the trial, on receiving as I understood a message that the President was ready to consider the case, you took the portion of the record described as attached together by a ribbon, and which contained the findings, sentence, and recommendation to mercy, to the President yourself in person for his action, and on the return of the paper to the Bureau from the Adjutant General's Office, which took place after the promulgation of the proceedings, the approval of the President with his order for the execution of the sentence, in your handwriting, signed by him, appeared written on the leaf of the record, as above set forth, intervening between the close of the last order of the Court and the recommendation to clemency. The leaves were then attached together as when first seen by me. The page on which the signature of the President, together with the greater part of his order of approval, was written, was confronted by the next page, on which the recommendation to clemency appeared, the leaves having been fastened together, as is usual, at the ends; this brought these two pages directly face to face to each other.

On the 5th of August, 1867, Mr. Stanton, then Secretary of War, sent for me, and in presence of General Grant, asked me who was in charge of the Bureau in your absence. I informed him Colonel Winthrop; he requested I should send him over to him, which I did. The Colonel returned and asked me for the findings and sentence of the conspiracy trial, telling me he had to take it in person to the President. On taking the portion of the record referred to from the bundle, I found from the frequent handling of it several of the last leaves had torn loose from the ribbon fastening, and to secure them I put the eyelet in one corner of it. It has within a short time been returned to the Bureau by the President, and, fearing the leaves would become detached, I have again fastened them with three patent fastenings—the leaves being thus held and secured in the same position and relation to each other which they occupied when the record was originally received by the Bureau, and which relation has never been disturbed. The foregoing is distinctly fastened upon my memory, and not to be forgotten. Hoping the same may meet the point of your inquiry, I have the honor to be,

Very respectfully, your obedient servant,

JAMES M. WRIGHT,

Chief Clerk to Bureau of Military Justice.

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WAR DEPARTMENT,

BUREAU OF MILITARY JUSTICE,

WASHINGTON, D. C., January 15, 1868.

Brevet Major General Joseph Holt, Judge Advocate General United States Army:

GENERAL: In reply to your note of this date, I have the honor to state that I have carefully read the letter addressed to yourself, on the 8th instant, by Mr. James M. Wright, chief clerk of this Bureau, and that my recollection of the condition of that part of the record of the trial of the assassins of the late President containing the findings, sentences, and recommendation to mercy in the case of Mrs. Surratt, coincides entirely with the statements set forth in said letter.

Mr. Wright and myself saw the document, as he has stated, and the recommendation of Mrs. Surratt to Executive clemency by certain members of the Court was attached in the manner described by him. I subsequently saw it immediately after the publication of the President's action, and the arrangement of the leaves was the same as at first.

With regard to the transactions of the 5th of August, as set forth in the letter above referred to, I have no knowledge, but can positively state concerning the subsequent fastening of the leaves, which was on December 10 last, and know that their position was then, and still is, the same as when the paper was first received in the office. I am, General, very respectfully, your obedient servant,

FRANK T. HOWE.

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WASHINGTON, July, 1873.

General R. D. Mussey:

DEAR SIR: You are doubtless aware that soon after the execution of the assassins of

the late President, it was, by certain persons sympathizing with them, and seeking to relieve President Johnson of his proper responsibility for his action in the matter, reported in Washington and through the disloyal journals of the country that the petition, signed by five members of the Court, asking the President, in consideration of her age and sex, to commute Mary E. Surratt's death-sentence, had never been received by him, but had been withheld by me, when laying before him the record of trial, to which it was attached. This accusation being wholly false, I venture to ask of you such information as you may possess, tending to illustrate the issue of fact thus raised under circumstances so unjust to myself.

As showing how prolific is the spirit of detraction, it was also reported that I had prevented Miss Surratt from seeing the President the morning of the day on which her mother was executed, and in the wildness and silliness of popular credulity this ridiculous story is said to have received considerable credit at the time. Please state what you know as to the circumstances under which Miss Surratt was denied the interview with the President she is alleged to have sought on the occasion referred to. On the night before, she, with two friends, as now recollected, called at my house, bringing with them certain papers, appealing for clemency or a respite for her mother. I listened patiently to all they had to say, received the papers from their hands, and promised to deliver them to the President the following morning, which promise was faithfully kept. As I ascended the stairs of the Executive Mansion, on my way to the President's office with the papers, I saw Miss Surratt in the hall below, but nothing was either said or done by me seeking or tending to influence the question whether she should be received by the President or not. It was a matter with which I had no more to do than had any other citizen of the country. The decision of the question belonged to the President, with his constitutional advisers and doorkeepers —and certainly I was neither of these. It would have been sheer impertinence in me to have obtruded a suggestion on the subject. You were on duty at the Executive Mansion at the time, and enjoying, as you did, intimate personal and official relations with President Johnson, you probably had opportunities of knowing, either from your own observations or from conversations with the President, whether the petition referred to was seen and considered by him before the sentence was carried into execution.

I shall be much obliged for the statement of any information bearing on the subject which your recollection may enable you to make, and for any declarations made by the President as to the appeal to him in behalf of Mrs. Surratt on the ground of her sex.

Very respectfully, your obedient servant,

J. HOLT.

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WASHINGTON, D. C., August 19, 1873.

Hon. Joseph Holt, Judge Advocate General, United States Army; present:

DEAR SIR: Most cheerfully do I state my knowledge of the facts attending the conviction of Mrs. Surratt for participation in the assassination conspiracy; the refusal of Mr. A. Johnson, then Acting President, to pardon her, and the order for her execution.

* * * In the spring of 1865, being then an officer in the army, I was in Washington on business concerning the freedmen in Tennessee. My effort was making through Mr. Johnson, then Vice President. While waiting, Mr. Lincoln was assassinated. Half an hour after Mr. Johnson left the bed where Mr. Lincoln was dying, I saw him (Mr. Johnson) in his room and had a conversation with him of considerable length, much freedom, and great solemnity concerning the marvelous opportunity thus made for him and the Providential meaning of the event. Mr. Johnson had only a day or two before expressed to me his fear that Mr. Lincoln's kind nature was leading him to make such terms with the rebels as public justice and national security did not warrant. Mr. Johnson entered upon the discharge of his Presidential duties, as I then believed, and still believe, with an earnest desire to correct what he deemed Mr. Lincoln's error in this regard.

In a few days after the assassination I was detailed for duty with Mr. Johnson, and acted as one of his secretaries, and was an inmate of his household, until sometime in the fall of 1865.

About the time the Military Court that tried Mrs. Surratt concluded its labors, I was, if I remember aright, for some days the only persons acting as private secretary at the White House, my associate being absent on a visit. * * *

On the Wednesday previous to the execution, (which was Friday, July 7, 1865,) as I was sitting at my desk in the morning, Mr.

Johnson said to me that he was going to look over the findings of the Court with Judge Holt, and should be busy, and could see no one. I replied: "Very well, sir, I will see that you are not interrupted," or something to that effect, and continued my work. I think it was two or three hours after this that Mr. Johnson came out of the room where he had been with you, and said to me that the papers had been looked over and a decision reached. I asked what it was. He told me, approval of the findings and sentences of the Court; and he then gave me the sentences, as near as he remembered them, and said that he had ordered the sentence, where it was death, to be carried into execution on the Friday following. I remember looking up from my desk with some surprise at the brevity of this interval, and asking him whether the time wasn't rather short He admitted that it was, but said they had had ever since the trial began for "preparation;" and either then or later in the day spoke of his design in making the time short, so that there might be less opportunity for criticism, remonstrances, &c. I do not pretend to use his precise language as to this, but the purport of it was, that it was a disagreeable duty, and there would be endeavors to get him not to perform it, and he wished to avoid them as much as possible.

He also instructed me that he didn't desire to see any one who came on such errands, and to direct all who did, if they had any fresh evidence or any new reason why the sentence should not be executed, to send them to you that you might hear their story and communicate it to him.

I am very confident, though not absolutely assured, that it was at this interview Mr. Johnson told me that the Court had recommended Mrs. Surratt to mercy on the ground of her sex, (and age I believe). But I am certain he did so inform me about that time; and that he said he thought the grounds urged insufficient, and that he had refused to interfere; that if she was guilty at all, her sex did not make her any the less guilty; that he, about the time of her execution, justified it; that he told me that there had not been "women enough hanged in this war;" that he descanted upon the illogicalness of a woman's committing treason and then seeking to avoid its penalty because she was a woman, I am as sure as I am that I am now penning this sentence to you.

On Thursday there were many visitors, and many letters, telegrams, &c. I informed all who called what Mr. Johnson's orders were to me. These orders I regarded as peremptorily forbidding me to make any appeal to him in any one's behalf. Father Walter (or Father Wiget, I am not certain which) called, as did the Misses Herold, and, I believe, Miss Surratt. The reverend Father, I think, called twice, once to intercede for Mrs. Surratt. * * Mr. Johnson was made aware of his presence, but declined to see him, and bade me refer him, if he had anything to urge, to Judge Holt, and he reiterated his assertion, "I can see no one on this business. Let them see Judge Holt, and, if there is anything new, tell him." * * *

I desire to say further that on the morning of Friday you called at the Executive Mansion and saw the President. * * I recall also your speaking to me about Miss Surratt, then in the house, and I shall never lose the impression then made upon me of your deep pity for her, and of the pain which her distress caused you.

Further, I would say that as soon as an evening paper was procured, upon that Friday, I read from it to Mr. Johnson the account of the "Scenes at the White House," "the execution," &c.; and that neither then, nor at any subsequent time during my association with him, did Mr. Johnson ever express to me in any way, any, even the slightest, disapprobation of my conduct in relation to the admission of Miss Surratt; nor did he then, or subsequently during that association, ever intimate that his first knowledge of Miss Surratt's presence at the Executive Mansion on that day was my reading it from the paper to him that evening. I have no more doubt that he knew of her being there before the execution than I have that he was born in North Carolina and lives in East Tennessee.

If any one is to blame for the exclusion of Miss Surratt from an interview with Andrew Johnson, to intercede for her mother, it is Andrew Johnson himself. You certainly are not—could not be—for you had nothing whatever to do with the question of admitting or excluding people from Mr. Johnson.

I have noticed with deep pain, and still deeper shame, the attempt made some time since by certain men and certain journals to lay upon you the blame of Mrs. Surratt's execution. These men and journals assert, in substance, that you, knowing of the recommendation made by the Court for Mrs. Surratt's pardon, concealed it from Andrew

Johnson, and that in some way you prevented her daughter from seeing him and interceding for her.

The latter you could not have done. * * * The other story, that you concealed from Mr. Johnson the knowledge that the Court had recommended her pardon, is also untrue. * * * * *

For I now assert, what I have already said, that Mr. Johnson told me of that recommendation; and further, that no one of the Court ever mentioned it to me; and further, that I never saw the findings of the Court, and that no one in the War Department ever spoke to me about that recommendation. And yet General Boynton and Mr. L. L. Crounse, two journalists here, well known to the reading public all over the country, will tell you if you ask them, that it was owing to words dropped by me one evening on "Newspaper Row" that they first learned of the existence of such a paper. * * * I said I had seen this attempt to stigmatize you, for an act of which Andrew Johnson was then proud, and which he has since wished to repudiate, with deep pain and still deeper shame. I am pained because it is unjust and untrue, and because it seeks to acquit him by charging a fearful crime—of violated trust and of inhumanity—to you. I am ashamed because there has joined in the attempt a man who was once President (or acting President. * * *

Should you desire at any time to make any public use of the whole or any portion of this letter, you have my most cordial permission to do so.

Yours, very truly,

R. D. MUSSEY.

WASHINGTON, August 22, 1873.

General Joseph Holt, Judge Advocate General:

GENERAL: I have read the letters referred to in your communication of August 14th. There has never been in my mind any doubt as to your honorable action in the matter, and the testimony they contain is, in my judgment, conclusive. They certainly form your complete vindication.

Very truly yours,

WM. W. BELKNAP,
Secretary of War.

The following is an exact copy of the petition or recommendation so often referred to above:

The undersigned, members of the Military Commission detailed to try Mary E. Surratt and others for the conspiracy and the murder of Abraham Lincoln, late President of the United States, &c., respectfully pray the President, in consideration of the sex and age of the said Mary E. Surratt, if he can, upon all the facts in the case, find it consistent with his sense of duty to the country, to commute the sentence of death, which the Court have been constrained to pronounce, to imprisonment in the penitentiary for life.

Respectfully submitted,

D. HUNTER,
Major General, President.

AUGUST V. KAUTZ,
Brigadier and Brevet Major General.

R. S. FOSTER,
Brigadier and Brevet Major General.

JAMES A. EKIN,
Brevet Brigadier General, Quartermaster General's Office.

CHAS. H. TOMPKINS,
Brevet Colonel and Assistant Quartermaster.

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